

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address Scott Kosner, Esq. (SBN 172379) Tyson M. Takeuchi (SBN 177419) Law Offices of Tyson M. Takeuchi 1100 Wilshire Blvd., Ste. 2606 Los Angeles, CA 90017 Tel: (213) 637-1566 Fax: (888) 977-6310 Email: scottk@tysonfirm.com</p> <p><input type="checkbox"/> Respondent appearing without attorney <input checked="" type="checkbox"/> Attorney for Respondent: Guillermo M. Magana</p>		<p>FOR COURT USE ONLY</p>	
<p><b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - NORTHERN DIVISION</b></p>			
<p>In re: Guillermo M. Magana,</p> <p>Debtor(s).</p>		<p>CASE NO.: 9:17-bk-10879-DS CHAPTER: 13</p>	
		<p><b>RESPONSE TO MOTION REGARDING THE AUTOMATIC STAY AND DECLARATION(S) IN SUPPORT</b></p>	
		<p>DATE: 09/22/2020 TIME: 11:30 am COURTROOM: 201 PLACE: United States Bankruptcy Court 1415 State Street Santa Barbara, CA 93101</p>	
<p><b>Movant:</b> U.S. Bank Trust National Association</p>			

**Respondent:** ☒ Debtor ☐ trustee ☐ other:

**NOTE REGARDING FILING AND SERVICE OF RESPONSE, EXHIBITS AND DECLARATIONS:**

A copy of the Response, exhibit(s) and declaration(s) must be served upon:

- (1) Movant's attorney (or Movant, if Movant does not have an attorney);
- (2) the trustee; and
- (3) the judge who presides over this bankruptcy case.

Then the document must be filed with the court.

1. ☐ **NONOPPOSITION**

**The Respondent does not oppose the granting of the Motion.**

2. ☐ **LIMITED OPPOSITION**

- a. ☐ Respondent opposes the Motion only to the extent that it seeks immediate relief from stay. Respondent requests that no lock out, foreclosure, or repossession take place before (date): \_\_\_\_\_ and the reason for this request is (specify): \_\_\_\_\_
- b. ☐ As set forth in the attached declaration of the Respondent or the Debtor, the motion is opposed only to the extent that it seeks a specific finding that the Debtor was involved in a scheme to hinder, delay or defraud creditors.
- The Debtor:
- (1) ☐ has no knowledge of the Property.
- (2) ☐ has no interest in the Property.
- (3) ☐ has no actual possession of the Property.
- (4) ☐ was not involved in the transfer of the Property.
- c. ☐ Respondent opposes the Motion and will request a continuance of the hearing since there is an application for a loan modification under consideration at this time. Evidence of a pending loan modification is attached as Exhibit \_\_\_\_\_.

3. ☒ **OPPOSITION:** The Respondent opposes granting of the Motion for the reasons set forth below.

- a. ☐ The Motion was not properly served (specify):
- (1) ☐ Not all of the required parties were served.
- (2) ☐ There was insufficient notice of the hearing.
- (3) ☐ An incorrect address for service of the Motion was used for (specify): \_\_\_\_\_
- b. ☒ Respondent disputes the allegations/evidence contained in the Motion and contends as follows:
- (1) ☒ The value of the Property is \$ 354,837.00, based upon (specify):  
Redfin.com internet real estate comparable sales information.166168.49
- (2) ☒ Total amount of debt (loans) on the Property is \$ 166,168.49.
- (3) ☒ More payments have been made to Movant than the Motion accounts for. True and correct copies of canceled checks proving the payments that have been made are attached as Exhibit A.
- (4) ☐ There is a loan modification agreement in effect that lowered the amount of the monthly payments. A true and correct copy of the loan modification agreement is attached as Exhibit \_\_\_\_\_.
- (5) ☐ The Property is necessary for an effective reorganization. Respondent filed or intends to file a plan of reorganization that requires use of the Property. A true and correct copy of the plan is attached as Exhibit \_\_\_\_\_.
- (6) ☐ The Property is fully provided for in the chapter 13 plan and all postpetition plan payments are current. A true and correct copy of the chapter 13 plan is attached as Exhibit \_\_\_\_\_ and proof that the plan payments are current through the chapter 13 trustee is attached as Exhibit \_\_\_\_\_.
- (7) ☐ The Property is insured. Evidence of current insurance is attached as Exhibit \_\_\_\_\_.

(8) ☐ Movant's description of the status of the unlawful detainer proceeding is not accurate.

(9) ☐ Respondent denies that this bankruptcy case was filed in bad faith.

(10) ☐ The Debtor will be prejudiced if the Nonbankruptcy Action is allowed to continue the nonbankruptcy forum.

(11) ☒ Other (*specify*):  
Debtor suffered a tragic death in the family and his income has been decreased due to the Covid-19 pandemic. Debtor request the court order an Adequate Protection Order.

c. ☐ Respondent asserts the following as shown in the declaration(s) filed with this Response:

(1) ☐ The bankruptcy case was converted from chapter \_\_\_\_ to chapter \_\_\_\_.

(2) ☐ All postpetition arrearages will be cured by the hearing date on this motion.

(3) ☐ The Property is fully provided for in the chapter 13 plan and all postpetition plan payments  
☐ are current, or ☐ will be cured by the hearing date on this motion.

(4) ☒ The Debtor has equity in the Property in the amount of \$ 188,668.49.

(5) ☐ Movant has an equity cushion of \$ 167,378.51 or 100 % which is sufficient to provide adequate protection.

(6) ☒ The Property is necessary for an effective reorganization because (*specify*):  
Debtor and his family live in the property

(7) ☒ The motion should be denied because (*specify*):  
Debtor has sufficient equity in the property to protect the Movant's interest. Debtor request the court order an APO to cure any/all mortgage arrears.

(8) ☐ An optional memorandum of points and authorities is attached in support of this Response.

**4. EVIDENCE TO AUTHENTICATE EXHIBITS AND TO SUPPORT FACTS INSERTED IN THE RESPONSE:**

Attached are the following documents in support of this Response:

☒ Declaration by the Debtor

☐ Declaration by the Debtor's attorney

☐ Declaration by trustee

☐ Declaration by trustee's attorney

☐ Declaration by appraiser

☒ Other (*specify*): true and correct printout of property's  
Fair Market Value from Redfin.com

Date: 09/10/2020

Law Offices of Tyson Takeuchi

Printed name of law firm for Respondent (if applicable)

Scott Kosner, Esq.

Printed name of individual Respondent or attorney for Respondent

SCOTT KOSNER  
Signature of individual Respondent or attorney for Respondent

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
1055 Wilshire Blvd., Ste. 850, Los Angeles, CA 90017.

A true and correct copy of the foregoing document entitled: **RESPONSE TO MOTION REGARDING THE AUTOMATIC STAY AND DECLARATION(S) IN SUPPORT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 9/10/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Movant: L. Bryant Jaquez, Esq. Ghidotti-Berger: bjaquez@ghidottiberger.com

Debtor's Counsel Scott Kosner, Esq.: tyson@tysonfirm.com

Chapter 13 Trustee Elizabeth F. Rojas: cacb\_ef\_nd@ch13wla.com

United States Trustee (ND): ustpreion16.nd.ecf@usdoj.gov.

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (date) 9/10/2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

U.S. Bank, Trust, N.A., c/o Ghidotti-Berger LLP, 1920 Old Tustin Ave., Santa Ana, CA 92705.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

9/10/2020

Date

Armen Galstian

Printed Name



Signature

# DECLARATION

DECLARATION OF GUILLERMO MAGANA

I, Guillermo Magana, declare and state as follows:

1. I am the debtor in chapter 13 bankruptcy case number 9:17-bk-10879-DS. I am over the age of eighteen years, and if called upon to testify, I could and would do so competently. I have personal knowledge of the facts set forth herein, and based on that personal knowledge I assert that all such facts are true and correct to the best of my knowledge. To the extent I base my testimony upon information and belief or upon admissible evidence other than my personal knowledge, I will specifically state.

2. I filed the instant chapter 13 bankruptcy case on May 18, 2017. Said case was assigned case number 9:17-bk-10879-DS. My chapter 13 plan was confirmed on October 16, 2017.

3. I am the owner of the real property, ("Property"), namely a single-family residence located at 608 Sycamore Street, Santa Paula, California 93060 which is the subject of this motion for relief from stay.

4. I believe the fair market value of my home is \$354,837. I arrived at this amount through internet comparable sales data, namely, Redfin.com. I have attached a true and correct copy of Redfin's comparable sales data as Exhibit B to this Response.

5. The Movant's motion states that I owe a total of 166,168.49 against my property.

6. There is \$188,668.51 equity in my property. This amount of equity should provide the mortgage company with sufficient adequate protection for it's loan.

1 7. I would like to let the Court and the mortgage company  
2 know that I have recently suffered great financial hardship.

3 8. On July 8, my grandson, who lived with my family since  
4 the age of two, tragically passed away. We had numerous funeral  
5 costs to pay associated with his passing.

6 9. My employment has also slowed down due to the Covid-19  
7 pandemic.

8 10. My adult daughter, Nora, is the person in our family  
9 who physically mails out the monthly payments to the mortgage  
10 company. She believes that the mortgage company has not given me  
11 credit for all the payments I have made. We believe that a  
12 payment I made to the mortgage company on March 5, 2019 was not  
13 credited to my account. I have attached a true and correct copy  
14 of said payment as Exhibit A to this motion

15 11. On September 8, 2020, I made three (3) mortgage  
16 payments to the mortgage company which I was not given credit  
17 for. I have attached a true and correct printout from my bank  
18 statement showing the payments.

19 12. Also, I am not 100% sure if the mortgage company gave  
20 me credit for the \$3,150 payment I made on May 26, 2020 and the  
21 \$1,100 payment I made on June 1, 2020. I have attached a true  
22 and correct bank statement page showing said payments as Exhibit  
23 A.

24 13. If it is determined that I am behind on my monthly  
25 Post-petition mortgage payments, I respectfully request that the  
26 court order an Adequate Protection Order so that I may catch up  
27 on any/all arrears.

28

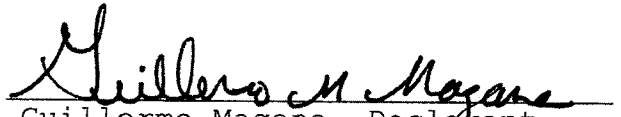
1 14. Based on the foregoing, I respectfully request that  
2 the Court deny the Movant's motion for relief or order an  
3 Adequate Protection Order.

4 I declare under penalty of perjury under the laws of the  
5 State of California and the United States of America that the  
6 foregoing is true and correct to the best of my knowledge and  
7 belief.

8 ///

9 ///

10 Executed this 10<sup>th</sup> Day of September, 2020, at Santa Paula,  
11 California.

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14 Guillermo Magana, Declarant  
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# EXHIBIT A

282111107 NEW 01/08 881

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

**CASHIER'S CHECK**

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

9519108339

91-

12:



Remitter: LILIANA RUIZ

Date 03/05/2019

Void after 7 years

Pay To The Order Of: BSI FINANCIAL

Pay: THREE THOUSAND EIGHT HUNDRED FORTY DOLLARS AND 00 CENTS

\$\*\* 3,840.00 \*\*

*Guillermo Magana*

Do not write outside this box

Memo: #146156193

Note: For information only. Comment has no effect on bank's payment.

Drawer: JPMORGAN CHASE BANK, N.A.

*Sol Gindi*

Sol Gindi, Chief Administrative Officer  
JPMorgan Chase Bank, N.A.  
Phoenix, AZ

⑈9519108339⑈ ⑆122100024⑆ 806002234⑈

*How WERE these  
Funds Applied?*

Date	Description	Amount
05/15/20	LIMONEIRA COMPAN DES:DIRECT DEP ID:654072149814S7A INDN:MAGANA,GUILLERMO MAG CO ID:9111111101 PPD	981.43
05/29/20	LIMONEIRA COMPAN DES:DIRECT DEP ID:784076587098S7A INDN:MAGANA,GUILLERMO MAG CO ID:9111111101 PPD	1,315.70
<b>Total deposits and other additions</b>		<b>\$2,297.13</b>

## Withdrawals and other subtractions

### ATM and debit card subtractions

Date	Description	Amount
05/11/20	CHECKCARD 0508 SPECTRUM 855-707-7328 CA 24692160129100580386513	-338.00
05/14/20	BKOFAMERICA ATM 05/14 #000008710 WITHDRWL SANTA PAULA SANTA PAULA CA	-500.00
06/08/20	CHECKCARD 0607 SPECTRUM 855-707-7328 CA 24692160159100067550824	-341.03
<b>Total ATM and debit card subtractions</b>		<b>-\$1,179.03</b>

### Other subtractions

Date	Description	Amount
05/21/20	TFS 888-729-2413 DES:TFS PAY ID: 5502154 INDN:Guillermo Magana CO ID:9342065079 PPD	-563.99
05/26/20	BSI FINANCIAL SE DES:BSI FINANC ID:1461156193 INDN:GUILLERMO M MAGANA CO ID:20082 TEL	-3,150.00
06/01/20	TFS 888-729-2413 DES:TFS PAY ID: 551004 INDN:Guillermo Magana CO ID:9342065079 PPD	-563.99
06/04/20	BSI FINANCIAL SE DES:BSI FINANC ID:1461156193 INDN:GUILLERMO M MAGANA CO ID:20082 TEL	-1,100.00
<b>Total other subtractions</b>		<b>-\$5,377.98</b>

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Inclusion on the Advisory Panel subject to qualifications.

SSM-09-19-0761 A1 | ARGST4RM

09/10/20 11:11 AM

09/10/20



Accounts

Processing

- \$1,100.00  
\$0.00ACH HOLD BSI  
FINANCIAL SE BSI  
FINANC ON 09/09

Processing

- \$342.59  
\$0.00CHECKCARD SPECTRUM  
855-707-7328 ON 09/08

Processing

- \$13.39  
\$0.00CHECKCARD JACK  
IN THE BOX 0 SANTA  
PAULA CA ON 09/07

Sep 8, 2020

- \$1,100.00  
\$1,516.13BSI FINANCIAL SE  
DES:BSI FINANC  
ID:XXXXX56193  
INDN:GUILLERMO M  
MAGANA CO ID:20082  
TEL

Sep 8, 2020

- \$1,100.00  
\$2,616.13BSI FINANCIAL SE  
DES:BSI FINANC  
ID:XXXXX56193  
INDN:GUILLERMO M  
MAGANA CO ID:20082  
TELSEP 8 2020  
Payment2020  
To my bank  
Approved  
2 Payments~~SEP 8 2020~~  
August  
Payment

# EXHIBIT B

← Search

11

## 608 Sycamore St

Santa Paula, CA 93060

**\$354,837**

Redfin Estimate

**680** Sq. Ft.

\$522 / Sq. Ft.

**\$118,000**

Last Sold Price

**2**

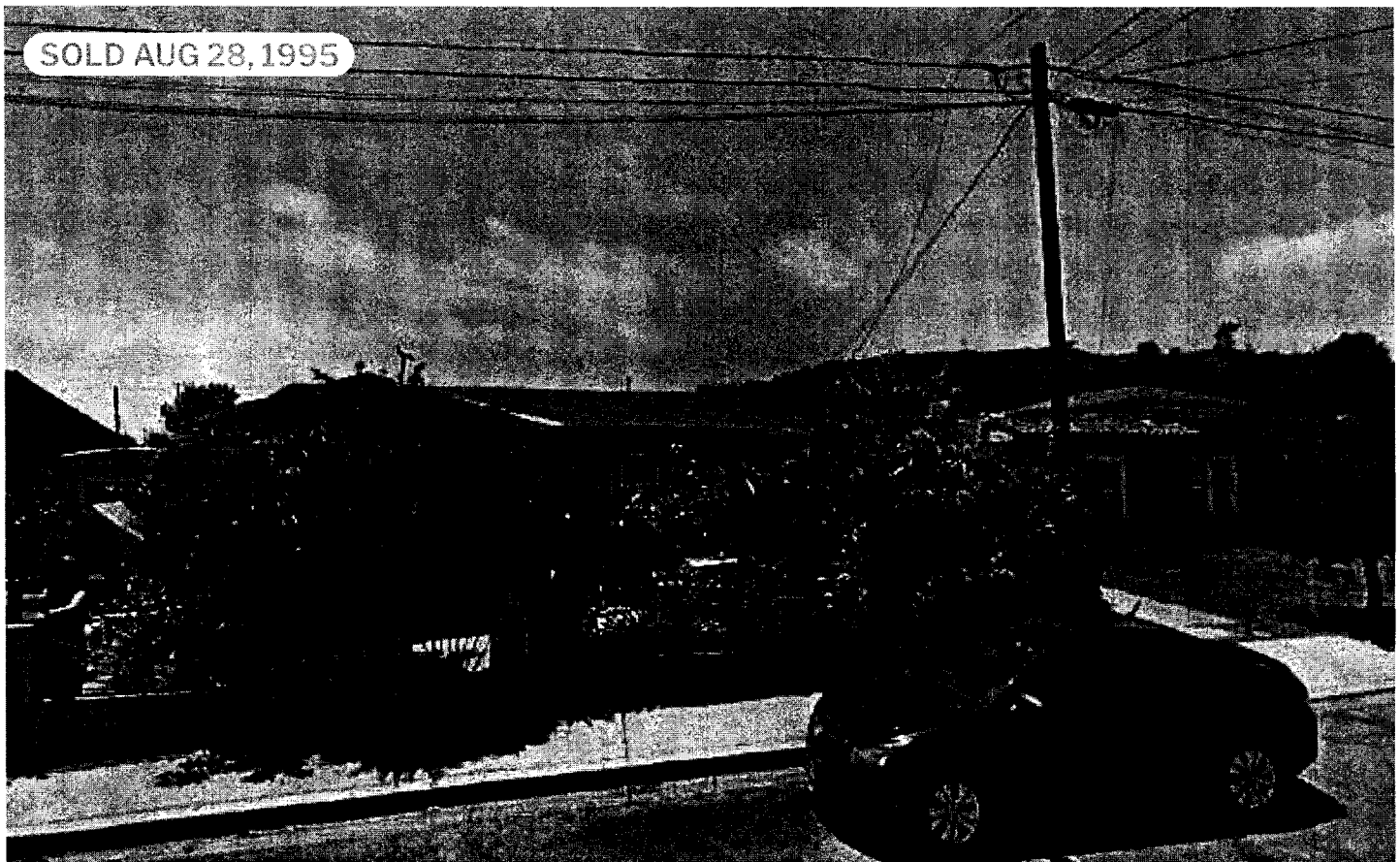
Beds

**1**

Bath

Built: 1929

Status: Sold Source: Public Records



## Redfin Estimate for 608 Sycamore St

Edit Home Facts to improve accuracy.

Create an Owner Estimate